

Remarks

Reconsideration of this Application is respectfully requested.

Upon entry of the foregoing amendment, claims 1-49 are pending in this application. Claims 1, 11, 24, 39 and 54 are amended. These changes are believed to introduce no new matter, and their entry is respectfully requested.

Claim 54 stands rejected under 35 U.S.C. § 101 as being directed to non-statutory matter. Claims 1-3, 7, 22, 24-26, 30, 35, 38 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Ofek et al., U.S. Patent No. 6,598,134. Claims 4-5, 27-28 and 37 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Ofek et al. in view of Rabii et al., U.S. Patent Publication No. 2002/0032691. Claims 6, 23, 29, 36 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ofek et al. as applied to claims 1, 28 and 24 and in view of Burton et al., U.S. Patent No. 6,738,865 and further in view of Hayter, U.S. Patent No. 6,405,294. Claims 8-10, 21, 31-34 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ofek et al. as applied to claim 1 in view of Uemura et al., U.S. Patent No. 5,720,026. Claims 11-15, 17, 20, 39-43, 45, 48-49, 51, 53-54 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ofek et al. in view of Uemura et al. Claims 16, 44 and 50 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ofek et al., Uemura et al. in view of Burton et al. and further in view of Hayter.

Based on the above amendment and the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

Interview at USPTO of May 15, 2006

Applicants' representative thanks the Examiner for the courtesies extended during the interview of May 15, 2006.

Rejections under 35 U.S.C. § 101

Claim 54 is amended to conform to current USPTO guidelines regarding computer software inventions. Applicants respectfully request that the rejection be withdrawn.

Rejections under 35 U.S.C. § 103

All the pending claims are rejected based on Ofek *et al.*, or Ofek in combination with other references. As discussed during the interview, Applicants respectfully disagree with the Examiner's interpretation of Ofek and with the applicability of a migration-related reference to the pending claims. For example, as discussed during the interview, the Office Action regards element 14 as the "source device," and element 17 as the "backup storage device" (the "destination") – however, after the migration, it is element 14, not 17 that would have to be the "backup device." This interpretation is clearly inconsistent – element 14 is either the source for the backup, or the destination for the backup, but it cannot be both – certainly Ofek does not teach that element 14 can simultaneously function as both the source and the destination for a backup. The inconsistency, in fact, illustrates why the use of a migration reference to reject backup-directed claims (despite superficial similarity) is problematic.

Nonetheless, in the interest of advancing the prosecution of this application, Applicants amended all the independent claims to recite that the storage device is operable to be restored multiple times, and can be restored to any prior consistent state of the storage device. Support for this aspect may be found, for example, at page 16, lines 4-10, page 18, lines 17-24 and in the

title of the application. At least this aspect is not disclosed in Ofek *et al.* Even if element 14 (or, for that matter, elements 17 or 24) of Ofek were to be treated as some sort of a backup storage device (which it is not), the system of Ofek is clearly not designed to restore any of its elements multiple, or to any prior consistent state, see, e.g.:

backup (<http://www.snia.org/education/dictionary/b/>)

(noun) A collection of data stored on (usually removable) non-volatile storage media for purposes of recovery in case the original copy of data is lost or becomes inaccessible. Also called backup copy. To be useful for recovery, a backup must be made by copying the source data image when it is in a **consistent** state.

This is self-evidently different from a migration. In the case of Ofek, the state of element 14 is not maintained in any consistent state during the process of migration.

Furthermore, the claims have been amended to recite that the intermediate storage is protected from data loss due to overwrite, which provides an additional distinction over Ofek.

Reconsideration and allowance of the claims is therefore respectfully requested.

Conclusion

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,
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